

Illinois Department of Transportation

FFY 2003

Overall DBE Goal

Introduction

The Illinois Department of Transportation (Department) has prepared this document to describe the methodology used to establish the overall goal mandated by 49 CFR Part 26. The Department relied on the regulations and guidance provided concerning the implementation of the regulations. 49 CFR 26.45 requires a two-step process for setting the overall goal for DBE participation in contracts. The first step is the calculation of a base figure for the relative availability of DBEs to work on Department contracts. This step is intended to determine the percentage that DBEs represent of all firms that are ready, willing and able to compete for contracts and subcontracts. The second step considers a possible adjustment of the base figure to produce a proposed overall goal that represents the amount of DBE participation the Department might expect to achieve as precisely as possible considering available and relevant evidence. Finally, as required by 49 CFR 26.51, the Department estimates a projection of the portion of the proposed overall goal that can be met through race-neutral means and the basis for the projection.

Public Participation

In order to satisfy the public participation requirements of the regulations, the Department held public meetings to solicit information from any organization, group or individual interested in the program. The meetings were held June 26, 2002 in Springfield and July 11, 2002 in Chicago. Notices of the meetings were widely circulated and published sufficiently in advance to encourage maximum participation. Written comments were provided by the Illinois Road and Transportation Builders Association that generally approved the methodology as the best information presently available, but suggested that current goal modification requests indicated a need for a lower goal. The Department believes that the submitted methodology produces supportable goals, and that the record of modification requests has not established a consistent trend that suggests a need for adjustment in the methodology for FFY 2003. The Department also received written comments from the Federation of Women Contractors and from the Alliance of Minority & Female Contractors. The Department is responding to the issues raised by these two groups in an effort to further an understanding of the goal setting process, and to assess whether these groups have any more reliable information than has been provided to date concerning the availability of disadvantaged and non-disadvantaged businesses. The responses will be part of a long-term process that will not yield useful results that are timely for purposes of this submission. Generally, however, the comments take two forms. The first are those that evidence a misunderstanding of the goal-setting methodology. This submission contains an expanded explanation of the methodology in an effort to aid basic understanding. The second are those that indicate a belief that the goal should be significantly higher based on an assertion that disadvantaged businesses are more numerous than found to be the case by the Department methodology. This submission indicates the reasons for the Department's decisions in this regard. The Department firmly believes that its actions must be guided by the best available information that is refined and reliable in order to avoid the overestimation of the number of businesses.

Discussion of Methodology and Evidence

Initially, the Department has determined that the market area is the State of Illinois. While the determination of the market area is not as simple as selecting the political jurisdiction of the Department as a geographic area, the Department has concluded that the designated market area is accurate. The market area is, according to federal guidance, the area in which the substantial majority of the contractors and subcontractors with which the Department does business are located, and the area in which the substantial majority of contracting dollars are spent. In each of these respects, the public contract records of the Department indicate that the appropriate market area is the geographical area of the State of Illinois. All Department contracts are performed in the State. Any out-of-state contractor or subcontractor must meet the same qualifying standards and requirements as in-state firms.

In the market area, the Department has two principal types of contractors that participate on Department contracts, construction contractors and engineering consultant contractors. Of these, construction contractors dominate the analysis. The Department has selected and used a refined bidders list process to calculate the base percentage availability in each contractor category because it represents the best available and demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses desiring to participate in Department contracts. The refined bidders list is based on the actual record of prequalified construction contractors combined with the required registration of all construction subcontractors. All engineering consultants and subconsultants are prequalified. This has produced a reliable source of ready, willing and able businesses for the overall goal determination that is also the most refined data available, and demonstrated to be rationally related to the relative availability of DBEs in the market.

The Department recognized from the outset of the new federal regulations that the bidders list procedure offered the best way of determining the availability of ready, willing and able businesses. The Department already had in place, for decades, a comprehensive prequalification system that provided substantial information about a readily available pool of contractors interested in bidding work advertised by the Department. A prequalification system is commonly understood to be a means for predetermining the responsibility of bidders participating in a public competitive bidding context required by law. In addition, it was determined that it was possible to institute an annual registration process for subcontractors desiring to work on Department projects. Therefore, in 2000, the Department implemented a requirement by duly adopted rules that any business interested in quoting to prime contractors on Department projects must annually register as a subcontractor (excluding truckers and material suppliers) with the Department. 44 Ill. Admin. Code 650.370.

The subcontractor registration requirement has been very successful. Now, any business interested in doing work on Department projects must be either prequalified to bid or registered to subcontract. This effectively assesses the “ready, willing and able” component of the goal-setting process. The Department is now entering the fourth year of a substantial public works program named Illinois FIRST. The past three years have seen the largest construction program in history. Based on these factors, the Department has concluded that it is appropriate to determine that any potential contractor ready, willing and able to participate in this program would have registered or become prequalified to do so. The Department believes that the prequalification listings and the subcontractor registration provide a superior, accurate measure of ready, willing and able construction contractors and subcontractors. The prequalified list of consultants does the same for engineering contracts. Therefore, the Department has concluded

that this refined bidders list process is more appropriate, accurate and rational than other methods given as examples for use in the federal regulations such as disparity studies that are not available for the Department's market area.

Considering other methods to measure the actual relative availability of DBEs that perform highway construction work, the Department evaluated the minority program lists from the other agencies with programs related to the DBE program: Metra, Chicago Transit Authority (CTA), PACE, Illinois Department of Central Management Services (CMS), and City of Chicago. These lists were ruled out because they were comprised of numerous firms in industries unrelated to Department work and would not perform the types of contracts that the Department lets. Additionally, these lists are not based on the Department's market area. Full implementation of the Unified Certification Program (UCP) may affect this conclusion in the future. At present, and considering the goal for FFY 2003, the UCP has not had an impact. Regardless of the impact of the UCP, the Department intends to continue the above-described registration process as the best means to consider the current readiness and willingness of businesses to participate.

Using the Department's DBE Directory was considered. However, a number of certified DBE firms have not registered as subcontractors to participate on Department contracts. Given the knowledge those certified firms have of the process, the Department has concluded that this reflects a clear unwillingness on the part of the unregistered firms to participate. Also listed in the directory are truckers and suppliers that are interested in providing those services to the construction contractors and subcontractors. The Department certifies supply and trucking DBEs for goal credit purposes. However, registration as subcontractors is not required for truckers and suppliers. Therefore, the Department has no listing of non-DBE trucking firms. The Department has an approved material supply list that identifies material suppliers without reference to DBE status. Because the list is product based, it contains over 5000 suppliers, many of whom would have a very small dollar value impact to the overall construction program. The Department believes that the goal impact of these businesses is adequately reflected in Step Two of the goal-setting procedure discussed in this submission. Due to these factors, the Department does not have the present ability to use the entire directory list for the "apples to apples" comparison of ready, willing and able DBE firms to the entire contractor marketplace mandated by federal guidance.

First Step

Step one is intended to measure the actual relative availability of DBEs to perform as prime contractors and as subcontractors on Department contracts. By the explained method, the Department attempts to determine the percentage that DBEs represent of all firms that are ready, willing and able to compete for contracts.

Determining the Relative Availability of DBE Contractors

As of the final count date for purposes of annual goal submission, the Department had 823 prequalified construction contractors; DBEs totaled 43 and non-DBEs totaled 780. Registered subcontractors totaled 864; registered DBE subcontractors totaled 133 and non-DBEs totaled 731. The Department had 364 prequalified engineering consultants, of which 64 were DBEs.

1. To determine the percentage availability of the Department's DBE construction contractors, the number of registered DBE subcontractors was added to the number of prequalified DBE construction contractors (133+43=176). The resulting sum was divided by the number of all registered construction subcontractors, prequalified prime construction contractors, including all registered and prequalified DBE construction contractors and subcontractors (1687). The calculation produces a 10.43 percentage result.

$$\frac{176}{1687} = 10.43 \text{ percent availability of DBE construction contractors}$$

2. To determine the availability of the Department's DBE engineering consultant contractors, the number of the Department's prequalified DBE consultant contractors (64) is divided by the number of all prequalified consultant contractors, including prequalified DBE consultant contractors (364). The calculation produces a 17.58 percentage result.

$$\frac{64}{364} = 17.58 \text{ percent availability of DBE engineering consultants}$$

Determining the Step One Base Figure

It is necessary to combine the percentage availability results in a calculation that weights the relative impacts of the two percentages in order to use them for the base figure determination. The weighting factor was determined by dividing the median dollar amount of consultant awards by the median dollar amount for consultant and construction awards for contracts awarded over the past five federal fiscal years.

	FFY 97	FFY 98	FFY 99	FFY 00	FFY 01
Total engineering consultant contracts awarded by the Department	\$54.9M	\$58.9M	\$96.6M	\$193.3M	\$166.1M
Median: FFY 99-\$96.6M					

	FFY 97	FFY 98	FFY 99	FFY 00	FFY 01
Total Consultant and Construction Awards	\$974.7M	\$807.4M	\$1174.6M	\$1526.2M	\$1783.0M
Median: FFY 99-\$1174.6M					

$$\frac{96.6M}{1174.6M} = 8.2 \text{ percent}$$

This calculation yields a weighting factor of 91.8 percent for contractors and 8.2 percent for consultants. The relative percentage availability figures are adjusted by the weighting factors and the results are added to arrive at the composite percentage amount.

$$\begin{array}{rcl} 10.43 \text{ percent} \times 91.8 \text{ percent} & = & 9.57 \text{ percent} \\ 17.58 \text{ percent} \times 8.2 \text{ percent} & = & \underline{1.44} \text{ percent} \\ \text{Composite} & & 11.01 \text{ percent} \end{array}$$

This composite percentage is the base figure representing the actual relative availability of DBEs in the Department's market area.

Second Step

Step Two is intended to adjust the base figure to make it as precise as possible as dictated by evidence available in this jurisdiction. After examination of the available evidence discussed above, the Department concludes that an adjustment to the base figure is required to take into account the current capacity of DBEs to perform work as measured by the volume of work committed to be performed annually in recent years.

Determining the Capacity of DBE Participants

To determine the volume of work that can be performed by DBE construction participants, the annual amounts committed to DBE highway construction participants was divided by the annual awarded amounts of highway construction contracts let. DBE participants include all businesses including truckers and suppliers. The initial dollar value of awards and the amount initially committed to DBE participation in the same fiscal year are the best available information for the analysis because it compares the same type of information necessary for a consistent capacity measure. Actual tracked payments made to DBEs as a measure of capacity would be an alternative, but current information over recent years is only available based on commitments. Moreover, the Department believes that using actual tracked payments may not be accurately comparable to annual award amounts. This area will be studied as new information is developed through the regulatory reporting process.

	FFY 97	FFY 98	FFY 99	FFY 00	FFY 01
Total construction contracts awarded by the Department	\$866.3M	\$713.8M	\$1057.2M	\$1266.6M	\$1378.4M
City of Chicago and Cook County FA awards	<u>53.5M</u>	<u>34.7M</u>	<u>20.8M</u>	<u>66.3M</u>	<u>238.5M</u>
Total awards	\$919.8M	\$748.5M	\$1078.0M	\$1332.9M	\$1616.9M

Total DBE participation on Department construction contracts	\$113.9M	\$90.8M	\$115.8M	\$137.7M	\$141.9M
Total DBE participation on City and County FA contracts	<u>18.8M</u>	<u>10.4M</u>	<u>10.8M</u>	<u>23.1M</u>	<u>76.1M</u>
Total DBE participation	\$132.7M	\$101.2M	\$126.6M	\$160.8M	\$218.0M
DBE Percentage	14.43%	13.52%	11.74%	12.06%	13.48%
Median: FFY 01-13.48%					

To determine the volume of work performed by DBE engineering consultant contractors, the total amount committed to DBE consultant contractors was divided by the total awarded amount of consultant contracts. The amount committed is appropriate because subconsultants must be prequalified and the service to be performed by DBE consultants is established at the time of negotiating the contract. The median of the last two federal fiscal years is shown below. The last two years were selected instead of the last five because those recent years more accurately reflect actual current and anticipated outlays caused by increased consultant contracting. This produces an assessment of current capacity judged by the Department to be more accurate than the alternative.

	FFY 00	FFY 01
Total engineering consultant contracts awarded by the Department	\$193.3M	\$166.1M
Total DBE participation on Department engineering consultant contracts	\$18.8M	\$19.9M
DBE Percentage	9.73%	11.98%
Median: 10.86%		

Determining the Volume Composite

Before determining the composite of these numbers, the figures were again weighted as above.

$$\begin{array}{rcl} 13.48 \text{ percent} \times 91.8 \text{ percent} & = & 12.37 \text{ percent} \\ 10.86 \text{ percent} \times 8.2 \text{ percent} & = & \underline{.89} \text{ percent} \\ \text{Composite} & & 13.26 \text{ percent} \end{array}$$

This volume composite is the percentage that represents the actual relative capacity of DBE participants in the Department's market area without regard to the number of firms available. The result accounts for all participants not considered in Step One such as truckers and material suppliers.

Determining the Overall Goal

The base figure calculated in Step One and the volume composite figure calculated in Step Two are averaged to arrive at the percentage of available DBE contractors for Department work that will be established as the Overall Goal.

$$\begin{array}{rcl} \text{Base Figure} & & 11.01 \text{ percent} \\ \text{Volume Composite} & & \underline{13.26} \text{ percent} \\ & & 24.27 \text{ percent divided by } 2 = 12.14 \text{ percent} \end{array}$$

Overall Goal: 12.14 percent

FFY 2003 Projection of the Race/Gender-Neutral Portion of the Overall Goal

Commitment: The Department will meet the maximum feasible portion of its overall goal by using Race/Gender-Neutral (R/G-N) means of achieving DBE participation. The Department believes that past results have been aided by its extensive R/G-N outreach efforts, and that future results will depend on the strongest effort possible to achieve the promise of a level playing field for the participation of DBEs.

Outreach: The Department has implemented an extensive outreach program to attract additional disadvantaged and small business participation, and to assist those businesses as they become competitive in a R/G-N environment. The Department retains a network of consultants to provide management, technical and financial services to these businesses in order to increase their knowledge and competitiveness as contractors. Additionally, a technology assistance program provides services in the areas of computerization and Internet utilization. Such assistance is targeted when major projects are planned. The Department selected District 4 for such targeted assistance in anticipation of substantial work on Interstate 74.

Networking: The Department sponsors and serves as the host of networking sessions throughout the state to encourage cooperation and participation on major construction projects. The Department is also cooperating with a statewide network of twenty (20) Small Business Development Centers administered by the Small Business Administration and the Illinois Department of Commerce and Community Affairs in an effort to provide information and training to disadvantaged and small business enterprises.

Facilitation: The Department continues to develop and expand its web site as a valuable source for information and facilitation of communication. The Contractor's Market Place has been expanded in an effort to help prime contractors, subcontractors, and suppliers do business with the Department. The primary objective of the Contractor's Market Place is to facilitate communications by providing an electronic bulletin board. Prime contractors are offered the ability to communicate their desire for quotes to subcontractors and suppliers. Subcontractors and suppliers have the ability to communicate their interest to prime contractors in providing quotes on a specific letting items and work categories. Information is organized by letting date and posted in an easy-to-read report format. Reports are updated each day. Once a firm has indicated an interest in bidding or quoting, this information is used to assist prime contractors in determining which firms are interested in bidding without mailing requests for quotes or making telephone calls.

Understanding: As part of the Department's partnering with minority and women business associations, industry associations and other government agencies, a Small Business Advisory Committee (SBAC) has been created that serves in an advisory capacity to the Department regarding matters relating to the DBE program. Industry associations representing prime contractors and DBE interests, from both geographic and special interest perspectives, serve on the SBAC.

Success: The targeted assistance effort in District 4 is the best example of the success the Department strives to achieve. Prior to the effort, that District had only two active DBEs. Now, there are seventeen certified DBEs, five of which are prequalified to bid Department contracts. This will result in increased performance and, it is anticipated, increased R/G-N achievement in the District.

Estimate of Projected Race/Gender-Neutral Participation

The Department has evaluated recent DBE program participation to determine R/G-N DBE participation. R/G-N achievement includes DBE participation on contracts without goals and DBE participation in excess of the contract goals.

FFY	Construction RN	Consultants RN	Total RN / Total Awards		RN %
1997	\$26.7M	\$1.5M	\$28.2 / \$974.7M	=	2.89%
1998	\$19.3M	\$2.0M	\$21.3 / \$807.4M	=	2.64%
1999	\$23.8M	\$2.6M	\$26.4 / \$1174.6M	=	2.25%
2000	\$26.9M	\$4.2M	\$31.1 / \$1526.2M	=	2.01%
2001	\$32.1M	\$3.7M	\$35.8 / \$1783.0M	=	2.01%

Median Race/Gender-Neutral Achievement: FFY 99-2.25%

Therefore, based on the Department's overall goal of **12.14%**. The anticipated race/gender-neutral achievement amount is **2.25%** of the overall goal. This **2.25%** projection results in a contract goal level of **9.89%** overall.